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*Attorneys for California Department of Water  
Resources*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**In re:**

**PG&E CORP.,**

**Debtor.**

CASE NO. 19-30088

Chapter 11

**In re:**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtor.**

CASE NO. 19-30089

Chapter 11

Hearing: January 31, 2019  
Time: 10:00 a.m.  
Place: 450 Golden Gate Avenue  
16<sup>th</sup> Floor  
San Francisco, CA 94102  
Judge: Honorable Dennis Montali

**PRELIMINARY OBJECTION TO DIP FINANCING MOTION [DOCKET NO. 23]**

1 The California Department of Water Resources, acting under the authority and powers  
2 created by California Water Code Sections 80000 through 80270 (“CDWR”), hereby files this  
3 preliminary objection to the Motion of Debtors Pursuant to 11 U.S.C. §§ 105, 362, 363, 364, 503  
4 And 507, and Fed. R. Bankr. P. 2002, 4001, 6003, 6004 and 9014 For Interim and Final Orders  
5 (I) Authorizing The Debtors To Obtain Senior Secured, Superpriority, Postpetition Financing,  
6 (II) Granting Liens And Superpriority Claims, (III) Modifying The Automatic Stay, (IV)  
7 Scheduling Final Hearing and (V) Granting Related Relief, based on the following:<sup>1</sup>

8 1. Since 2000, the Utility and dozens of other parties, including CDWR and the  
9 CPUC, have been engaged in complex and disputed regulatory proceedings, appellate  
10 proceedings, litigation, and investigations regarding numerous issues and allegations arising from  
11 events in the Western Energy Markets during the years 2000 and 2001.

12 2. Over the course of those years, funds have been set aside in various qualified  
13 settlement funds and in one or more accounts held by the California Power Exchange pursuant to  
14 the terms of over 60 settlement agreements approved by the CPUC and the Federal Energy  
15 Regulatory Commission (“FERC”), and pursuant to other orders issued by FERC (the “Funds”).

16 3. Pursuant to express CPUC directives, the interests of the Utility in the Funds will  
17 be administered for the benefit of the public or public good.

18 4. While Schedule A of the Motion, under the heading “Funds Held in Trust or  
19 Escrow,” appears to be intended to capture the Funds, it fails to account for the fact that the Funds  
20 are held by parties other than the Debtor and will continue to earn interest as provided in the  
21 settlement agreements and FERC orders.

22 5. To remedy this oversight and ensure that all Funds are unambiguously carved out  
23 of the DIP Collateral, the Department asks that the following carve-out in Schedule A of the  
24 Motion be revised as shown: “Any assets or property held by the Debtors in trust for, or  
25 otherwise administered for the benefit of, the public or public good, pursuant to an express CPUC  
26 directive or another express Requirement of Law, each as in existence as of the Petition Date, **and**

27 <sup>1</sup> Capitalized terms used but not defined in this preliminary objection have the meaning  
28 given to them in the Motion.

1 **all interest earned thereon**, as provided below: a. Settlement funds in relation to energy crisis  
2 litigation that have been deposited in escrow **and all interest earned thereon now and in the**  
3 **future**, ~~as directed by the 2003 Bankruptcy Settlement~~ **including any interests of the Debtors in**  
4 **funds held in any escrows, qualified settlement accounts or accounts of the California Power**  
5 **Exchange established in connection with the 2000-2001 energy crisis refund proceedings**  
6 **pending before the Federal Energy Regulatory Commission in Dockets EL00-95 and EL00-**  
7 **98.**

8 6. CDWR has not had sufficient time to fully review the Motion and other first day  
9 motions filed by the Debtors in this case and reserves the right to assert or join other objections in  
10 connection with the final hearing on the Motion and other first day motions.

11 7. Neither this preliminary objection nor any subsequent appearance, pleading, proof  
12 of claim, claim or suit is intended or shall be deemed or construed as:

13 (a) a consent by CDWR to the jurisdiction of this Court or any other court with  
14 respect to proceedings, if any, commenced in any case against or otherwise involving CDWR;

15 (b) a waiver of any right of CDWR to (i) have an Article III judge adjudicate  
16 in the first instance any case, proceeding, matter or controversy as to which a Bankruptcy Judge  
17 may not enter a final order or judgement consistent with Article III of the United States  
18 Constitution, (ii) have final orders in non-core matters entered only after *de novo* review by a  
19 District Court Judge, (iii) trial by jury in any proceeding so triable in the Chapter 11 Cases or in  
20 any case, controversy, or proceeding related to the Chapter 11 Cases, (iv) have the United States  
21 District Court withdraw the reference in any matter subject to mandatory or discretionary  
22 withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs, recoupments or remedies  
23 to which CDWR is or may be entitled under agreements, in law or in equity, all of which rights,  
24 claims, actions, defenses, setoffs and recoupments are expressly reserved hereby; or

25 (c) a waiver of any objections or defenses that the State of California, CDWR  
26 or any other agency, unit or entity of the State of California may have to this Court's jurisdiction  
27 over the State of California, CDWR or any other agency, unit or entity based upon the Eleventh  
28

1 Amendment to the United States Constitution or related principles of sovereign immunity or  
2 otherwise, all of which objections and defenses are hereby reserved.

3 Dated: January 30, 2019

Respectfully Submitted,

4 XAVIER BECERRA  
5 Attorney General of California  
6 MARTIN GOYETTE  
7 Senior Assistant Attorney General  
8 DANETTE VALDEZ  
9 Supervising Deputy Attorney General

10 By: /s/ Paul J. Pascuzzi  
11 PAUL J. PASCUZZI  
12 FELDERSTEIN FITZGERALD  
13 WILLOUGHBY & PASCUZZI LLP  
14 *Attorneys for California Department of*  
15 *Water Resources*

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**PROOF OF SERVICE**

I, Lori N. Lasley, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, Suite 1750, Sacramento, CA 95814. On January 30, 2019, I served the within documents:

**PRELIMINARY OBJECTION TO DIP FINANCING MOTION  
[DOCKET NO. 23]**

By Electronic Service only via CM/ECF.

/s/ Lori N. Lasley  
Lori N. Lasley